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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,776	08/31/2001	Andrej Kocev	15311-2310	1813
24267	7590	11/20/2003	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			PHAM, THOMAS K	
			ART UNIT	PAPER NUMBER
			2121	11
DATE MAILED: 11/20/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/944,776	KOCEV ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thomas K Pham	2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 September 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 13-16 is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) 11 and 12 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

***Response to Amendment***

1. This action is in response to request for re-consideration filed on 9/5/2003
2. New claims 11-16 filed by the applicant has been entered.
3. Claims 1-10 have been considered but they are not persuasive.
4. Claims 1-3 and 6-8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtzberg et al. U.S. Patent No. 6,360,263 in view of DeJager et al. U.S. Patent No. 6,473,424.
5. Claims 4-5 and 9-10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtzberg et al. U.S. Patent No. 6,360,263 in view of DeJager et al. U.S. Patent No. 6,473,424 and in further view of Wallach et al. U.S. Patent No. 6,173,346.
6. Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Claims 13-16 are allowed.

***Response to Arguments***

In the remark the applicant argues that cited reference fails to disclose:

- I) "determining the number and type of transactions anticipated at a port" as for claims 1 and 6.
- II) "devices being serviced via a port" as for claims 1 and 6.
- III) "setting criteria for transactions at the port with respect to the number and type of transactions and devices" as for claims 1 and 6.

In response to applicant's argument,

I) It was noted that prior art (Kurtzberg et al. U.S. Patent No. 6,360,263) teaches (column 1 lines 57-58, "operating upon the current job requirements for determining required resources").

Therefore, it is clear that the number and type of transactions are determined. Thus, examiner believes that a "job" or "task" is an anticipated "transaction" as claimed by the applicant(s).

Therefore, limitations are met by the reference.

II) In response to applicant's argument, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, prior art (Kurtzberg et al.) teaches (column 2 lines 53-55, "These resource types are needed to satisfy the requirements of programs and data modules of any user") and prior art (DeJager et al. U.S. Patent No. 6,473,424) teaches (column 2 lines 50-52, "allocate port assignments based on load, that is, the amount of data being forwarded through each port in the group"). Therefore, it is clear that the combination of the I/O ports allocating system of resources of DeJager and the dynamic resource allocation system of Kurtzberg because it would provide for adjusting the criteria respect to the transactions at I/O ports in order to optimize the load distribution depending upon each port's current utilization. Thus, limitations are met by the references.

III) Prior art (DeJager et al.) also suggest (column 3 lines 20-24, "assigning the packet having the stream ID to a queue of a port in the port group, and a mechanism for adjusting a queue assignment of a prior packet having the stream ID to a queue of a different port of the port group

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based on load in the queues of the ports in the group"). Therefore, examiner interprets that the criteria for transaction is set base on load at the port. Thus, limitations are met by the reference.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

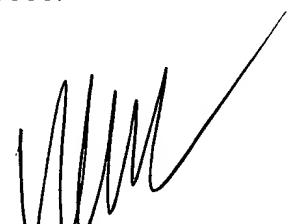
Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Thomas Pham*; whose telephone number is (703) 305-7587 and fax number is (703) 746-8874. The examiner can normally be reached on Monday-Thursday and every other Friday from 7:30AM- 5:00PM EST or contact Supervisor, *Mr. Anil Khatri*, can be reached on (703) 305-0282.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

**Thomas Pham**  
*Patent Examiner*

*TP*

November 17, 2003



**ANIL KHATRI**  
SUPERVISORY PATENT EXAMINER